

PART 1940 - GENERAL

Subpart Q - Restrictions on Lobbying

§1940.801 Purpose.

This subpart implements section 319 of Public Law 101-121, which prohibits applicants and recipients of Federal contracts, grants and loans from using appropriated funds for lobbying the Federal Government in connection with a specific award. Section 319 also requires that each person who requests or receives a Federal contract, grant, loan, or a Federal commitment to guarantee a loan, must disclose the expenditure of any funds, other than appropriated funds, for lobbying activities. This subpart provides administrative guidance regarding the information contained in U.S. Department of Agriculture's (USDA) 7 CFR part 3018 and Departmental Regulation (DR) 2400-5, which are attached as Exhibits A and B of this subpart.

§1940.802 [Reserved] (Revised 07-31-96, PN 264.)

§1940.803 Definitions.

In addition to the following, refer to the definitions in §3018.105 of Exhibit A of this subpart.

Appropriated funds. Federal funds received from any Federal agency for a purpose or purposes authorized by such agency.

Communication. Includes written, oral, electronic or other means of communications.

Receiving office. The State, District, or County Office that is the primary office responsible for processing an application.

§§1940.804 - 1940.809 [Reserved]

DISTRIBUTION: WSDC

Loan and Grant Making
General

§1940.810 Certification for contracts, grants and loans.

- (a) The Certification for Contracts, Grants and Loans, contained in Exhibit A-1 of this subpart, must be completed at the time an application or bid proposal is submitted by a person requesting a contract or grant exceeding \$100,000, or a loan exceeding \$150,000.
- (b) Any person who requests or receives a contract, subcontract or subgrant exceeding \$100,000 at any tier under a covered contract, grant or loan, must complete and submit a certification to the next higher tier.
- (c) The certification completed by a person referred to in paragraph (a) of this section will be collected by the receiving office and filed in the case folder.
- (d) Recipients of contracts, grants or loans, or their subs, who receive certifications from lower tier applicants or recipients shall file the certifications with documents related to the subaward, and shall make them available for Agency examination upon request.
- (e) Refer to §3018.110 of Exhibit A of this subpart for additional information.

§1940.811 Statement for loan guarantees.

- (a) The Statement for Loan Guarantees, contained in Exhibit A-2 of this subpart, must be completed by the lender at the time an application is filed for each loan exceeding \$150,000.
- (b) The statement will be collected by the receiving office and filed in the case folder.
- (c) Refer to §3018.110 of Exhibit A of this subpart for additional information.

§1940.812 Disclosure of lobbying activities.

- (a) Standard Form (SF) LLL, "Disclosure of Lobbying Activities," which is part of Exhibit A of this subpart, must be completed by a person requesting or receiving a Agency contract, grant, loan, or a Agency commitment to guarantee a loan, and who meets the following conditions:
 - (1) the award amount exceeds the threshold stated in §1940.810(a) or §1940.811(a) of this subpart; and

(2) the person has made or has agreed to make any payment, using funds other than appropriated funds, to influence or attempt to influence a decision in connection with that specific award.

(b) SF-LLL must also be completed by any person who requests or receives a contract, subcontract or subgrant at any tier under a covered contract, grant or loan, and who meets the following conditions:

(1) the award amount exceeds \$100,000; and

(2) the person has made or has agreed to make any payment, using funds other than appropriated funds, to influence or attempt to influence a decision in connection with that specific award.

(c) Each person who meets all conditions of paragraph (a) or (b) of this section will submit a disclosure form at the time of the application or bid proposal, and, at the end of each calendar quarter in which there occurs an event as specified in §3018.110 (c) of Exhibit A of this subpart.

(d) All disclosure forms, including quarterly updates, will be collected in the receiving office. The forms completed by persons under paragraph (a) of this section will be submitted directly to the receiving office. Forms completed by persons under paragraph (b) of this section will be submitted to the next higher tier. They will then be forwarded from tier to tier until they reach the receiving office. The original completed form will be retained in the case folder. One copy will be forwarded to the State Director, and a second copy will be sent immediately to the following address:

USDA, Office of Operations
Procurement Division
Policy and Review Team
14th and Independence Ave., S.W.
Room 1575-S
Washington, D.C. 20250

(e) The information provided on this form cannot be used by the FmHA as a basis for denying Federal assistance.

(f) Refer to Exhibit B of this subpart for additional information.

§§1940.813 - 1940.819 [Reserved]

§1940.820 Exceptions.

(a) The prohibition on the use of appropriated funds and disclosure requirements governing the use of funds, other than appropriated funds, do not apply to certain activities. These activities are described in Subparts B and C of Exhibit A of this subpart.

(b) Section 319 of P.L. 101-121 imposes no restrictions on the use of any funds for general lobbying; i.e., attempts to influence Congress or the Executive Branch with respect to a program, rather than a specific award. Such general lobbying need not be disclosed on SF LLL. However, Section 319 does not authorize lobbying otherwise restricted or prohibited by law.

§1940.821 Examples.

Several examples of activities addressed by this Instruction are contained in Exhibit C of this subpart. They are to be used for guidance purposes only.

§§1940.822 - 1940.839 [Reserved]

§1940.840 Penalties and enforcement.

(a) Failure to comply with the provisions of this subpart may result in civil penalties, as described in §3018.400 of Exhibit A of this subpart.

(b) The Administrator, FmHA, shall take such actions as are necessary to ensure that the provisions in Section 319 of P.L. 101-121 are vigorously implemented and enforced.

§§1940.841 - 1940.850 [Reserved]

Attachments: Exhibits A, A-1, A-2, B, and C

oOo

1940-Q Exhibit A not automated please see manual

CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including contracts, subcontracts, and subgrants under grants and loans) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(name)

(date)

(title)

oOo

STATEMENT FOR LOAN GUARANTEES

The undersigned states, to the best of his or her knowledge and belief,
that:

If any funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to guarantee a loan, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(name)

(organization)

(title)

(date)

oOo

1940-Q Exhibit B not automated see manual

EXAMPLES OF ACTIVITIES ADDRESSED BY RD INSTRUCTION 1940-Q

1. [A] is an applicant for a \$1,000,000 FmHA Rural Rental Housing Loan. [B] is an architectural firm retained by [A] for preliminary design studies. [A] has requested [B] to visit the FmHA State Office to discuss design options for use in developing an application.

This technical activity is specifically authorized for use of appropriated funds and does not need to be reported by [A] as a lobbying activity. However, if the visit includes any communication with FmHA officials on application issues that are not architecturally related, the activity is not exempt from the law.

2. [C] will be submitting a loan application in the amount of \$149,000 for a community facility. [C] has paid, with its own funds, [D], a consultant, to visit the National Office to help expedite the application when it is received.

[C] will not be required to submit a certification nor a disclosure form because the loan amount is less than \$150,000.

3. [E] is borrowing \$2,000,000 from FmHA to construct a hospital. The construction contract with [F] is in the amount of \$1,700,000. [F] has a mechanical subcontract with [G] in the amount of \$150,000.

[E] must submit a certification to FmHA at the time of the application. [F] must submit its certificate with the proposed bid to [E]. [G], having a subcontract of more than \$100,000, must submit a certificate to [F]. [E] and [F] will retain the certifications they received from the lower tier awardees.

4. [H] is a lender who has requested an 80 percent guarantee on a \$175,000 guaranteed loan for applicant [I]. [I] submitted the loan application without a signed statement from [H] because the guaranteed portion of the loan (80% of \$175,000) was less than \$150,000.

The amount that determines whether or not a statement is required from the lender is the total guaranteed loan (amount obligated = \$175,000); therefore, the application should have included a statement from [H]. [I] is not required to sign a certification.

5. [J] is a long time FmHA borrower who submitted a Form SF LLL because she paid [K], a lobbyist, with her own funds, to visit Washington in an attempt to persuade a Member of Congress to increase the Farmer Programs budget for the next fiscal year.

The disclosure form is not required when the lobbying activity involves a program and not a specific application or award.

oOo

